



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: DECEMBER 06, 2022

IN THE MATTER OF:

Appeal Board No. 625404

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determinations disqualifying the claimant from receiving benefits, effective October 2, 2021, on the basis that the claimant voluntarily separated from employment without good cause and, in the alternative, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to October 2, 2021 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed August 9, 2022 (), the Administrative Law Judge overruled the initial determinations.

The employer appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the employer's appeal and the written statement submitted by the claimant.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed as a full-time teacher by the employer, the New York City Department of Education ('NYC DOE'), from September 4, 2012 through October 26, 2021. He was a member of the union, United Federation of Teachers ('UFT').

In September 2021, the employer advised its employees that they had to submit proof of COVID-19 vaccination by October 1, 2021 to continue working for the employer due to a New York City mandate. The claimant knew he could lose his job if he failed to comply.

On September 10, 2021, pursuant to an arbitration agreement between the employer and the claimant's union, it was agreed that employees who were unwilling to be vaccinated could request a reasonable accommodation for medical or religious reasons.

On September 14, 2021, the claimant submitted a religious exemption request with supporting documentation including a letter from his Monsignor. The claimant is Catholic. The Pope has made public statements in favor of the vaccine.

On September 17, the employer denied the claimant's request and the claimant requested arbitration. Subsequently, an arbitrator issued a denial. As part of a larger appeal, the claimant appealed the denial to the Second Circuit Court of Appeals which invalidated the clause of the arbitration agreement requiring a religious letter and ordered New York City to establish a city-wide panel. The claimant did not get vaccinated and he was placed on leave without pay on October 26.

On November 29, the claimant submitted his information to the Citywide Appeal Panel. Thereafter, the Citywide Appeal Panel's decision found the claimant had demonstrated a sincerely held religious belief sufficient to justify a reasonable accommodation if such accommodation was not an undue hardship on the employer. However, the Panel further found the employer had shown it was an undue hardship because the claimant was a classroom teacher.

On February 18, 2022, the employer ended the claimant's employment for failing to comply with New York City's vaccine mandate.

OPINION: The credible evidence establishes the employer ended the claimant's employment for failing to comply with New York City's COVID-19 vaccine mandate, a condition of continued employment. The claimant was aware of this requirement and that he could be separated from employment if he chose not to comply thus we find that he provoked his discharge. A provoked discharge occurs when a claimant voluntarily violates a legitimate known obligation, leaving the employer no choice but to discharge him. A provoked discharge is

considered a voluntary leaving of employment without good cause for unemployment insurance purposes and subjects a claimant to a disqualification from receiving benefits (see, *Matter of DeGrego*, 39 NY2d 180 [3d Dept 1976]).

In this matter, the obligation in question was compliance with the employer's vaccine requirement. It is significant that this requirement was established for the purpose of complying with the New York Commissioner of Health's mandate that all public employees of the City of New York, including New York City Department of Education personnel, be vaccinated against COVID-19 during the worldwide pandemic. The Courts have long held that New York State has the authority to regulate public health, including mandating vaccination to curb the spread of disease (see *Matter of Garcia v. New York City Dept. of Health & Mental*

Hygiene, 31 NY3d 601 [2018], which upheld mandated annual influenza vaccinations for children attending childcare programs in New York City; *Matter of C.F. v. New York City Dept of Health & Mental Hygiene*, 191

AD3d 52 [2d Dept 2020], holding that a municipal agency had the authority to require immunizations of adults in an area where there was an outbreak of measles if authorized by law; and *Matter of New York City Mun. Labor Comm. v. City of New York*, 73 Misc 3d 621 [Sup. Ct. N.Y. Cnty. 2021], where the Court declined to grant a temporary restraining order of the implementation of the New York City Department of Education's COVID-19 vaccine mandate for its employees, noting that there was no dispute that the Department of Health and Mental Hygiene had the authority to issue the mandate and that the Court "...cannot and will not substitute [others'] judgment for that of New York City's public health experts," citing *New York State Inspection, Sec. & Law Enforcement Empls., Dist. Council 82 v. Cuomo*, 64 NY2d 233, 237-40 [1984]). Because of the severity of the ongoing COVID-19 crisis, the mandate that all Department of Education personnel be vaccinated against COVID-19 was justified by a compelling governmental interest. We therefore find that the employer's requirement that the claimant be vaccinated was a legitimate obligation and that the employer had no choice but to end the claimant's employment when he refused to meet it.

We now turn to the claimant's contention that his refusal to vaccinate was based on religious concerns for which he sought, and was denied, an exemption. We note that the Supreme Court of the United States has held that "... an individual's religious beliefs [do not] excuse him from compliance with an

otherwise valid law prohibiting conduct that the State is free to regulate" (see *Employment Div. v. Smith*, 494 US 872, 879 [1990]). The Court determined that provided a law is neutral and not aimed at a specific religion, is generally applicable, and pertains to an area of law the government has the ability to regulate, it cannot be preempted by a religious practice. In the matter now before us, there is no allegation that the City of New York cannot regulate the Department of Education, that the law is not generally applicable to those working in public schools, or that it targeted a specific religion. Moreover, the United States Supreme Court has denied requests to block the vaccine mandate for New York City teachers (See *Keil v. City of New York*, No. 21A398, 595 U.S. ___, March 7, 2022; *Maniscalco v. NYC Dept of Education*, No. 21-854, 596 U.S. ___, April 18, 2022).

Therefore, we find that the claimant's personal beliefs do not outweigh the employer's interest in protecting the health and safety of its employees and students. Accordingly, the claimant has not substantiated that he had good cause for ending continuing employment and we conclude that he was properly denied benefits. In light of the foregoing, the issue of misconduct is academic.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective October 2, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER